



## DEPARTMENT OF THE PROSECUTING ATTORNEY

**Peter B. Carlisle, Prosecuting Attorney**  
**Douglas S. Chin, First Deputy**

### POWER, DUTIES AND FUNCTIONS

The voters of Oahu elect the Prosecuting Attorney every four years. The Prosecuting Attorney shall:

- a) Attend all courts in the City and conduct, on behalf of the people, all prosecutions therein for offenses against the laws of the State and the ordinances and rules and regulations of the City;
- b) Prosecute offenses against the laws of the State under the authority of the Attorney General of the State;
- c) Institute proceedings before the district judges for the arrest of persons charged with or reasonably suspected of public offenses, when the Prosecuting Attorney has information that any such offenses have been committed, and for that purpose, take charge of criminal cases before the district judges;
- d) Draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration; and
- e) Investigate all matters that may properly come before the Prosecuting Attorney. Nothing herein contained shall prevent the conduct of proceedings by private counsel before courts of record under the direction of the Prosecuting Attorney.



*Prosecuting Attorney Peter Carlisle selected Douglas S. Chin as his new First Deputy Prosecuting Attorney.*



*Douglas Chin was sworn in by Judge Michael Town.*

### ORGANIZATION OF THE DEPARTMENT

The Department is organized into Administration and six divisions. Each of the divisions has a team of trial attorneys headed by at least one Chief and, in some divisions, one or more team captains. Teams of support staff, each of which is headed by a supervisor, assist the attorneys.

The six divisions are: (1) Career Criminal Division; (2) Domestic Violence/Juvenile Offenders Division; (3) Trials Division; (4) Screening and Intake Division; (5) Appellate Division; and (6) Misdemeanor and Traffic Division.

#### A. CAREER CRIMINAL/SEXUAL ASSAULT UNIT

The **Career Criminal (CC)** consists of one division Chief and 11 attorneys. Two paralegals, six clerical staff and five victim advocates shared with the felony Trials Division assist them.

CC is a highly skilled prosecutorial litigation unit that vertically prosecutes those offenders who are identified as recidivists, or career criminals by Hawaii Revised Statutes Section 845-3, as well as all cases involving convicted felons in possession of or using firearms and many of the felony-level sexual offenders.

From the time the case is accepted into the office until the time it is disposed of by sentencing, one prosecutor is responsible for that and any other case the individual defendant may have pending. The prosecutor follows the case from preliminary hearing or grand jury, through pre-trial motions, trial and finally sentencing. Through this vertical prosecution, a special working relationship between the police, witnesses, victims and the prosecutor can be fostered. This approach permits continuity in prosecution and enables the prosecutor to better handle the many challenges presented by these cases.



*Former First Deputy Iwalani White was appointed by Governor Lingle to Director of the Department of Public Safety.*

Section 845 cases consist primarily of drug and property crimes, such as burglary, theft, forgeries, vehicle thefts and auto break-ins. These cases are almost exclusively motivated by a desire to obtain property to trade for money to buy drugs. The most common drug bought is crystal methamphetamine, or “ice”. Ice is also a factor in the majority of the remaining crimes handled by this unit, the violent crimes such as murder, robbery, home invasions, assaults and firearms offenses.

Convicted career criminal defendants are exposed to enhanced sentencing requirements such as mandatory imprisonment, minimum terms which must be served before the inmates are eligible for release on parole, extended terms of imprisonment, and consecutive sentences.

The vast majority of sexual assault cases involve children who are repeatedly victimized by acquaintances or family members. These cases all present unique prosecution problems, including late reporting, fearful victims, poor memory for dates in long-term abuse cases, and an absence of witnesses other than the child and the perpetrator. Other sexual assault cases include child-stranger and adult-stranger and adult-acquaintance cases. Because of the sheer volume and complexity of sexual assault cases, experienced deputies in other units have been hand-picked to handle these cases this year as well.

All convicted felony sex offenders are included in the State’s Sex Offender Registry website pursuant to “Megan’s Law” and must adhere to strict registration and reporting requirements.

## **B. DOMESTIC VIOLENCE/JUVENILE OFFENDER DIVISION**

The **Domestic Violence/Juvenile Offender Division** consists of 20 attorneys, three paralegal assistants, six victim/witness counselors and ten support staff organized into three teams. Each team is highly specialized in the prosecution of either domestic violence or juvenile crimes and is supervised by an experienced attorney.

The **Domestic Violence Felony Team** consists of six attorneys who are supervised by an experienced domestic violence felony prosecutor. This team is responsible for prosecuting all felony domestic violence cases along with some sexual assault cases. This team focuses on the more serious violent offenses stemming from intimate relationships (husband-wife, boyfriend-girlfriend & same sex couples) and parent-child relationships.

In addition, this team also shares responsibility for prosecuting felony sexual assault cases with two other divisions within the office. While the majority of these cases involve child and adult victims victimized by perpetrators known to them, i.e., natural father, step-father, uncle, brother, boyfriend, neighbor, family friend, and other generally trusted acquaintances, this team also handles those cases involving strangers, chronic child molesters and serial rapists.

The Domestic Violence Felony Team employs vertical prosecution to better deal with the dynamics of these cases. Through vertical prosecution, the assigned prosecutor works with the victims, witnesses, and police investigators from the inception of the case up through, preliminary hearings, grand jury, pre-trial motions, trial, and sentencing. In order to accomplish this, a prosecutor is on-call 24 hours a day to assist police with various aspects of the investigation and then once completed, to review the case and make appropriate charging decisions. This approach maintains continuity and enables the prosecutor to better handle the many challenges presented by these cases which typically involve uncooperative domestic violence victims who recant or minimize at court due to fear of and/or affection for the perpetrator. It also allows our attorneys and staff to better service the often emotionally fragile and distraught sexual assault victims with greater sensitivity.

The **Domestic Violence Misdemeanor Team** consists of eight attorneys who are supervised by an experienced domestic violence felony prosecutor. This team handles all misdemeanor family or household member abuse cases under Section 709-906, HRS, along with all Family Court restraining order violations under Chapter 586, HRS. As such, this team is a higher-volume unit which focuses on violence stemming from intimate relationships (husband-wife, boyfriend-girlfriend & same sex couples) and parent-child relationships.

This team also employs vertical prosecution to the extent that they review, charge, and try their own cases. As part of this effort, a prosecutor is assigned to go to the police department receiving desk at about 3:00 a.m., Monday through Friday, to review/charge those cases involving misdemeanor defendants in custody. This helps ensure more consistency and better handling of these cases which are made difficult as the majority of victims are reluctant and/or uncooperative. In addition, as many of these offenders and victims are the same being handled at the felony level, it is helpful to have good communication between misdemeanor and felony prosecutors so that significant developments and information can be beneficially shared.

The **Juvenile Offender Team** consists of six attorneys supervised by an experienced Family Court Prosecutor. This team is responsible for the prosecution of all juvenile offenders (persons under 18 years of age when an offense is committed). Their cases range from traffic/misdemeanor offenses to all types of felony offenses, including sexual assaults and murder. The offenders range from first-time offenders who commit less serious crimes to the hard-core repeat offenders who may be waived to adult court for more serious crimes.

This team also employs vertical prosecution to the extent that they review, charge, and try the majority of their own cases. They do receive, however, some assistance at the initial conferral stage from the Screening and Intake Division and from the Sexual Assault Team and the Domestic Violence Felony Team.

### C. TRIALS DIVISION

The **Trials Division** consists of one division Chief, five team captains and 19 trial attorneys. Three paralegal assistants and 12 clerical staff support the division.

This is the largest division and it handles most of the felony cases in the Department. These cases include murder, sex assaults, white collar crime, campaign fraud, drugs, and property crime. Many high profile cases are handled by deputies from this division.

From July 1, 2005 to June 30, 2006, the division completed about 2,000 cases.

### D. SCREENING AND INTAKE DIVISION

The **Screening and Intake Division** (SID) consists of one division Chief, 12 screening deputies, seven support staff, and two paralegal assistants.

SID screens most felony cases (except for domestic violence and white collar cases which are handled by a different division) brought to this Department by the Honolulu Police Department and other State investigative agencies. SID primarily reviews felony cases and decides which ones to accept, which ones to reject, and which ones need follow-up work. SID also reviews search warrants, handles preliminary hearings in District Court, prepares and presents cases to the Oahu Grand Jury and prepares cases for information charging. In order to accomplish this, three prosecutors are dedicated to review search warrants and criminal felony cases brought in by the various law enforcement agencies five days a week during work hours. Two more prosecutors are on-call after hours and all day on weekends and holidays to assist police with various aspects of the investigation and, once completed, to review the case and make appropriate charging decisions. The remaining seven prosecutors review, assess, and prepare felony cases brought to SID, and also cover preliminary hearings, grand jury, and the information charging process.

SID covers a variety of felony offenses such as homicide, assault, terroristic threatening, identity theft, shoplifting, auto theft, and burglary to name just a few.

This past year, SID has focused much of its attention on introducing and implementing Information Charging (formerly known as Act 62) which was enthusiastically approved by voters in November 2004. SID reviews cases presented to our division and assess whether it qualifies for the Information Charging process, reviews and assesses the facts of the case, and prepares the necessary paperwork to process the case.

For the period beginning July 1, 2005 and ending June 30, 2006, SID handled 304 Grand Jury proceedings, 881 preliminary hearings and filed 399 Information Charging cases.

### E. APPELLATE DIVISION

The **Appellate Division** consists of one division Chief and six attorneys all of whom are assisted by a paralegal and three support staff.

The appellate attorneys represent the State of Hawai'i in all appeals from juvenile, criminal and traffic cases prosecuted by the Department of the Prosecuting Attorney. In addition to matters filed in the Hawai'i appellate courts, attorneys in this division also respond to motions and original proceedings such as petitions for habeas corpus and writs of prohibition or mandamus. These responses and petitions are often extensive and cannot be predicted.

Appellate attorneys also represent the State of Hawai'i in federal *habeas corpus* proceedings in which the prisoner-petitioner contests the state court judgment. This division has seen a significant increase in federal litigation over the last year and utilizes electronic filing in federal court. Federal habeas cases at times require hearings and additional proceedings before the federal district court. When these cases progress to the federal appellate level, the Ninth Circuit Court of Appeals sets them for oral argument, either here in Honolulu or in San Francisco. Recently, the Appellate Division filed a Petition for Writ of Certiorari in the United States Supreme Court and also filed responses to Petitions for Writ of Certiorari filed by state defendants.

In addition, attorneys in the Appellate Division are called upon to provide research and reference assistance to both the administration and the other divisions within the Department.

In fiscal year 2005-06, the appellate attorneys filed 118 briefs in the State appellate courts, thirteen (13) federal pleadings, including three (3) to the United States Supreme Court and 138 other substantive pleadings. Attorneys in the division won 91% of their cases in the State appellate courts during this period.

### F. MISDEMEANOR AND TRAFFIC DIVISION

This division is a high-volume unit handling thousands of cases each month. The caseload consists of traffic matters, Driving Under the Influence of Alcohol/Drug cases, criminal violations, petty misdemeanors, and full misdemeanors for the entire island of Oahu. This division has one chief, one captain and 16 trial lawyers and approximately 20 support staff. Prosecutors from this division are assigned to courtrooms at district courts in Honolulu, Ewa (Pearl City), Wahiawa/Waialua, Koolauloa/Koolaupoko (Kaneohe), and Waianae. The assigned attorneys do arraignments, motions, trials, and sentencing for a wide variety of cases that are prosecuted in these courts. An attorney assigned to this division does specialized prosecution in Street Solicitation, Waikiki Visitor Crimes, and Weed and Seed cases [see section on Community Prosecution].

## G. 2006 LEGISLATIVE ACTIVITY AND 2007 LEGISLATIVE PACKAGE

### 2006 Legislative Activity

The department sponsored the following state legislative bills, which passed in 2006. These bills:

- a) expand the offense of using a computer in the commission of a separate offense to include circumstances where a person intentionally uses a computer to commit theft in the first or second degree. Act 141 took effect on May 24, 2006;
- b) create a new offense of excessive speeding which would require mandatory minimum fines, driver's license suspensions, and attendance in driver retraining for persons convicted of exceeding the speed limit by thirty miles per hour or more or by driving at eighty miles per hour or more irrespective of the speed limit. In addition, first and second time offenders would be required to do either community service work or serve short sentences of imprisonment. Persons convicted of a third offense within five years of two prior convictions would have their driver's licenses revoked for a minimum of ninety days and must serve a minimum term of imprisonment of ten days. This legislation passed as Act 129 and will become effective on January 1, 2007; and
- c) expedite police processing of impaired drivers by requiring the police to notify impaired driving arrestees of the sanctions for refusing a blood, breath, or urine test **only if** the arrestee refuses to submit to the test and the police have informed the arrestee of his or her right to refuse. Currently, the police are required by state law to read **every** arrestee an implied consent form which contains the possible sanctions for refusing to take a blood, breath or urine test. Given that over three thousand people are arrested for impaired driving in Honolulu each year and that the vast majority of persons arrested for impaired driving agree to take a blood, breath or urine test, this bill should permit police officers to get back on patrol duties more quickly. Act 64 is scheduled to go into effect on January 1, 2007.

The Department also supported the following bills which passed in 2006 that:

- a) amend the state constitution to permit the legislature to define what constitutes a continuing course of conduct and jury unanimity in continuous sexual assault crimes against minors younger than fourteen years of age. This amendment is similar to one passed by the legislature and ratified by the voters in 2004 but was invalidated by the Hawaii Supreme Court in 2005 because of flaws in the procedure used to pass the legislation. The 2006 constitutional amendment was passed by the legislature and will be on the ballot for ratification by voters;
- b) repeal and reenact the offense of continuous sexual assault of a minor under the age of fourteen years. In 1997, the state legislature created the offense of continuous sexual assault of a minor which applies when a person resides in the same home with the minor or has recurring access to the minor and the person engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time. In addition, the offense does not require the each juror unanimously agree on each and every alleged sexual act which make up the three or more offenses; however each juror must find and agree that three or more sexual acts were committed against the minor by the defendant. The state legislature created this offense to address problems where minors had been repeatedly sexually assaulted over a long period of time by the same person and could not remember specific dates or details and modeled it after California's statute which had been upheld by their appellate courts. But in 2003 the Hawaii Supreme Court held that the state constitution required that jurors must unanimously agree as to each individual act which constitutes the three or more sexual acts for a person to be convicted. This bill, enacted as Act 60 and the constitutional amendment mentioned in a) are intended to create a continuous sexual assault of a minor offense that will withstand future judicial review;
- c) mandate special sentencing and conditions for habitual violent felons, i.e. persons convicted three or more times of certain felony crimes of violence. The special sentencing requires a mandatory minimum term of thirty years imprisonment with an indeterminate life term. Furthermore the bill, enacted as Act 81, prohibits a habitual violent felon from participating in any pre-release, furlough, or other modified terms of imprisonment except upon written authorization of the governor or when the person is in a work furlough program during the final year of his or her sentence and the person is incarcerated during the time the person is not working or traveling to or from work. Act 81 became effective on May 8, 2006 and will sunset on July 1, 2011;
- d) conform Hawaii's electronic surveillance laws to federal law as it appeared prior to the USA Patriot Act. By making state law more consistent federal law, Act 200, is expected to permit use of evidence gathered in federal electronic surveillance investigations in state court when federal authorities are unable to prosecute. Prior to this Act, the differences between state and federal law meant that any evidence gathered pursuant to a federally authorized investigation, would not comply with requirements of state law and therefore was likely to be inadmissible in state court. With this Act, which became effective on June 15, 2006, if federal authorities do not have the resources or jurisdiction to prosecute the individual, the state will be able to do so using the federally gathered evidence;
- e) create a new class C felony offense of unauthorized possession of confidential personal information. It is committed when a person possesses the confidential personal information of another without actual authorization or the reasonable belief that the person was authorized by law or consent to possess the information. The confidential personal information covered by the offense includes driver's license numbers, social security numbers, deposi-

tory account numbers, bank account numbers and certain passwords or codes. This new offense is intended to help fight identity theft by applying to persons who steal mail, identification cards and other information that can be used to fraudulently open or use accounts. In addition, Act 139 also provides that the offenses of identity theft in the third degree and unauthorized possession of confidential personal information are eligible for enhanced sentencing under repeat offender sentencing provisions. This Act went into effect on May 25, 2006;

- f) permit victims of identity theft to place a security freeze on the consumer's credit report by sending a written request by certified mail to consumer credit reporting agencies. The written request shall be accompanied by a valid copy of a police report, investigative report or complaint filed with a law enforcement agency regarding the unlawful use of victim's personal information by another person. The security freeze prohibits a consumer credit reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. The consumer may temporarily lift the freeze for specific parties or periods of time. Enacted as Act 138, this law takes effect on January 1, 2007;
- g) make numerous technical and substantive changes to the state's penal code as recommended by the 2005 Penal Code Review Committee. The committee was composed of trial and appellate judges, prosecutors, the public defender, defense attorneys, and the state attorney general as well as representatives of the Hawaii Paroling Authority, the Department of Public Safety and the Honolulu Police Department; it was tasked with completing a comprehensive review of the state's penal code and ensuring the code is in harmony with the entire criminal justice system and that the code has continued force and effectiveness. The proposed changes were enacted as Act 230, which became effective on June 22, 2006. They included amendments to Hawaii's extended term sentencing provisions made in response to federal court decisions regarding the constitutionality of certain types of extended term sentencing and provisions requiring that restitution be ordered in all cases where a crime victim requests such restitution and the victim's losses are reasonable and verified; and
- h) conform state substance control laws to federal laws regulating the sale and distribution of pseudoephedrine. Federal law restricts sales of pseudoephedrine, a major component for manufacturing of methamphetamine, to 3.6 grams per day or nine grams a month except where dispensed pursuant to a prescription. It also requires that pseudoephedrine products be moved behind the counter and that purchasers must sign a written log or receipt and provide identification to the retailer who must record the name and address of the purchaser, the date of the transaction and the amount purchased. Prior to the enactment of Act 171, retailers in the state were already required to follow federal regulations on pseudoephedrine but violations could only be prosecuted in federal court since there was no corresponding state law violation. Act 171 recognizes the limited resources of federal law enforcement and promotes a more effective and efficient drug enforcement strategy by also allowing the state to prosecute violations of pseudoephedrine sale and distribution regulations.

## 2007 Legislative Package

The Department will be introducing a constitutional amendment to provide that for the purposes of ratifying an amendment to the state constitution or determining whether to convene a constitutional convention, blank votes shall not be counted as "no" or negative votes. Under the proposed amendment, only yes and no votes would be counted.



**Coordination Honor Award  
Truancy Sweeps, 2005**

*(from left: Officer Arthur Takamiya, Weed and Seed Coordinator Maile Kanemaru, CCDO Director Nelson Hernandez, Deputy Prosecutor Tana Kekina-Cabaniero).*

## H. COMMUNITY PROSECUTION (CP) PROGRAM

Community prosecution is a proactive, community oriented, problem-solving approach to law enforcement that embraces the role of the community in solving community crime and safety problems. A key component of community prosecution is collaboration. Partnerships among community residents, businesses, private institutions, and law enforcement and other governmental agencies are developed and directed toward crime prevention goals. The CP Team consists of two attorneys who actively engage in numerous CP initiatives to improve the quality of life in Honolulu. Honolulu community prosecution's contributions to the advancement of justice in our community are nationally recognized. In 2005, Honolulu CP received its second Coordination Honor Award for its leadership role in coordinating truancy sweeps.

## **I. DRUG COURT**

There is one Deputy Prosecuting Attorney assigned to the Hawaii Drug Court Program. This attorney attends Drug Court sessions two (2) times a week to monitor the progress of Drug Court clients and provide the prosecution's perspective on dealing with program infractions. In addition to the regularly scheduled court sessions, this deputy attends all other Drug Court proceedings such as termination hearings, prepares memoranda of law and argues constitutional motions, conducts jury-waived trials, and argues sentencing. This attorney also reviews all applicants for Drug Court and plays an integral part in selecting appropriate candidates for this program. This attorney also assists in developing and improving the program, attends Drug Court Advisory Committee Meetings, educates personnel in the Department, the Honolulu Police Department, and the community about the program, and created a written manual of procedures, policies, and guidelines. Between July 1, 2005, and June 30, 2006, 49 new defendants were petitioned into the Hawaii Drug Court Program. During that time, 44 defendants graduated, spending an average of 21 months in the program. The Hawaii Drug Court Program terminated 13 defendants for non-compliance of program rules. About half of those terminated received prison terms. The other half received probation with up to one year jail. The Drug Court Program currently has 126 clients.